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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LOUISE MAE BROWN,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

B207676

(Los Angeles County
Super. Ct. No. BC358238)

APPEAL from a judgment of the Superior Court of Los Angeles County,
William M. Monroe, Judge. Affirmed.

Sedgwick, Detert, Moran & Arnold and Frederick B. Hayes; Dennis H. Boothe
and Howard H. Hall, Inc. for Plaintiff and Appellant.

Law Offices of Marc J. Wodin and Marc J. Wodin for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Louise Mae Brown (Brown) appeals from a summary judgment entered in favor of defendant and respondent the County of Los Angeles (the County). Brown contends there are triable issues of fact as to whether the County is estopped to assert the statute of limitations contained in Government Code section 945.6. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Preliminary facts.*

On June 6, 2005, Brown, through her attorney of record, filed a claim with the County for personal injuries. Brown alleged that on April 13, 2005, she was injured in the lobby of the Los Angeles County Courthouse located on San Fernando Road in Los Angeles when she sat on a chair that collapsed.

On June 8, 2005, Brown received a postcard from the executive officer of the County of Los Angeles Board of Supervisors informing Brown that the matter was being investigated and that Brown would receive a response within 60 days.

In a communication dated July 11, 2005, the County, through its adjusting service Carl Warren and Company (Warren & Co.), informed Brown that the accident “in no way involves the County. The incident occurred on premises owned and controlled by an entity other than County. The County of Los Angeles has no jurisdiction over the area where your client was involved in the accident. [¶] Specifically, this incident occurred on property owned, controlled and maintained by the State of California. Please direct your claim to this wholly separate entity. [¶] . . . [¶] It is not the intention of this letter to deter the filing of any lawsuit against the County where there is a justiciable controversy under the facts and the law. However, we do feel that in this case, there is no such basis.” The July 11, 2005, letter also reminded Brown that Code of Civil Procedure section 1038 could be applicable if litigation was filed. (Code of Civil Procedure section 1038 permits courts to award a governmental entity defense costs if a case has not been brought with reasonable cause and in good faith, and is resolved against a plaintiff/claimant upon summary judgment and other procedures.)

On July 21, 2005, the County, through Warren & Co., denied the claim in a letter mailed to Brown's attorney on that date. The letter contained a clear and explicit warning in bold that Brown had six months from the date of the letter to file a court action.¹

2. Brown's attempt to resolve the matter with the State of California.

On September 30, 2005, Brown filed a government claim with the State of California's Victim Compensation and Government Claims Board (the Board). Thereafter, the Board informed Brown that it was rejecting her claim because it had no jurisdiction over the Superior Court or its judges. However, in two telephone conversations in October 2005, a representative of the Board agreed that the State was responsible for maintenance and repairs of the courthouse where Brown was injured. On October 18, 2005, Brown sent the Board a letter, returning the claim form.

On October 26, 2005, pursuant to conversations with a Board representative, Brown submitted the filing fee, as had been requested. In the accompanying letter, Brown's attorney stated, that Brown had "been informed that the County of Los Angeles has no jurisdiction"

In November 2005, Brown received a letter from the Board stating that Brown's claim was being rejected on the grounds that it had been submitted more than six months after the accident. In response, Brown presented a request to present a late claim to the Board's claims division. On January 19, 2006, Brown again wrote to the Board's claims division requesting permission to file a late claim.

In a March 10, 2006, letter the Board informed Brown that the Board had scheduled a hearing on April 20, 2006, during which further inquiry would be made into Brown's claim. The letter also stated that if the Board rejected Brown's claim, she could

¹ The letter stated in part: "SUBJECT TO CERTAIN EXCEPTION[S], YOU HAVE ONLY (6) SIX MONTHS FROM THE DATE THIS NOTICE WAS PERSONALLY DELIVERED OR DEPOSITED IN THE MAIL TO FILE A COURT ACTION ON THIS CLAIM. SEE GOVERNMENT CODE SECTION 945.6. [¶] YOU MAY SEEK THE ADVICE OF AN ATTORNEY OF YOUR CHOICE IN CONNECTION WITH THIS MATTER. IF YOU DESIRE TO CONSULT AN ATTORNEY, YOU SHOULD DO SO IMMEDIATELY."

pursue litigation. On April 26, 2006, the Board informed Brown that her claim had been rejected at an April 20, 2006, hearing.

On September 11, 2006, Brown, through her counsel, filed a complaint in the Superior Court against the State of California. Brown alleged she was lawfully on premises owned and operated by the State of California when she was injured by the collapse of a chair.

On February 22, 2007, a State of California Deputy Attorney General informed Brown by letter that the State of California was not responsible for her injuries because the building was owned by the County.

3. *The complaint is amended to name the County of Los Angeles.*

On May 7, 2007, Brown amended her complaint to name the County as a defendant.

On June 11, 2007, the County answered, raising as one of its defenses Brown's failure to comply with the Torts Claims Act.

a. *The summary judgment motion.*

The County filed a motion for summary judgment contending Brown failed to comply with the Torts Claims Act because her complaint against the County had not been filed within six months from July 21, 2005, the date the County rejected Brown's claim. (Gov. Code, § 945.6.) Brown opposed the motion arguing that the County was estopped from asserting the limitation period.

The trial court granted the motion. Brown appeals from the subsequently entered judgment. We affirm.

DISCUSSION

1. *Standard of review.*

"Summary judgment provides a court with a procedure to pierce pleadings in order to determine whether a trial is truly necessary to resolve the dispute between the parties. [Citation.]" (*Jordan v. City of Sacramento* (2007) 148 Cal.App.4th 1487, 1492.)

"Summary judgment is properly granted where there are no triable issues of fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd.

(c.) We review the court's decision granting a summary judgment de novo. In doing so, we liberally construe all conflicting facts in the light most favorable to the party opposing the motion. [Citations.]” (*Estate of Molino* (2008) 165 Cal.App.4th 913, 921.)

2. *There are no triable issues of fact.*

Persons filing tort claims against a governmental agency must comply with the Government Torts Claims Act. Pursuant to Government Code section 945.6, where a public entity has denied a claim complying with Government Code section 913, the claimant must commence a lawsuit within six months of the denial. (*Orr v. City of Stockton* (2007) 150 Cal.App.4th 622, 630-631.) Here, the County denied Brown's government tort claim on July 21, 2005, yet Brown did not bring suit until September 11, 2006, and Brown did not name the County as a defendant until May 7, 2007.

The only issue before us is whether there are triable issues of fact as to whether the County is equitably estopped from asserting the time limitations contained in Government Code section 945.6.

“ ‘ “Equitable estoppel . . . comes into play only after the limitations period has run and addresses . . . the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period. [Equitable estoppel] is wholly independent of the limitations period itself and takes its life . . . from the equitable principle that no man [may] profit from his own wrongdoing in a court of justice.’ ” [Citations.]’ [Citation.] . . . ‘To create an equitable estoppel, “it is enough if the party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss.” . . . “Where the delay in commencing action is induced by the conduct of the defendant it cannot be availed of by him as a defense.” ’ [Citations.]” (*Atwater Elementary School Dist. v. California Dept. Of General Services* (2007) 41 Cal.4th 227, 232, citing among others, *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363.)

“ ‘The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he [or she] must intend that his [or her] conduct shall be acted

upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he [or she] must rely upon the conduct to his [or her] injury. [Citation.]’ [Citations.]” (*City of Goleta v. Superior Court* (2006) 40 Cal.4th 270, 279; see Evid. Code, § 623 [“Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.”].)

The act by the party to be estopped may include a misrepresentation or concealment of “material facts with knowledge of the true facts (or gross negligence as to them) and with the intent that another who is ignorant of the facts will rely on the misrepresentation or concealment” (*Jordan v. City of Sacramento, supra*, 148 Cal.App.4th at p. 1496; *Doe v. Bakersfield City School Dist.* (2006) 136 Cal.App.4th 556, 567.) Neither bad faith nor an intent to deceive is necessary. (*Jordan v. City of Sacramento, supra*, at p. 1496; *Doe v. Bakersfield City School Dist., supra*, 136 Cal.App.4th 556; *Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 43.) “ ‘ “To create an equitable estoppel, ‘it is enough if the party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss.’ . . . ‘. . . Where the delay in commencing action is induced by the conduct of the defendant it cannot be availed of by him as a defense.’ ” ’ [Citations.]” (*Lantzy v. Centex Homes, supra*, 31 Cal.4th at p. 384, fn. omitted.)

“The defendant’s statement or conduct must amount to a misrepresentation bearing on the *necessity* of bringing a timely suit; the defendant’s mere denial of *legal liability* does not set up an estoppel. [Citations.]” (*Lantzy v. Centex Homes, supra*, 31 Cal.4th at p. 384, fn. 18.)

“A public agency is subject to estoppel from the assertion of either the time limits for filing tort claims, or the statute of limitations on a cause of action. [Citations.]” (*Jordan v. City of Sacramento, supra*, 148 Cal.App.4th at p. 1496, citing among others, *Fredrichsen v. City of Lakewood* (1971) 6 Cal.3d 353, 357.)

Estoppel is generally a question of fact for the trier of fact. (*Ortega v. Pajaro Valley Unified School Dist.* (1998) 64 Cal.App.4th 1023, 1043.) However, where the facts are undisputed, estoppel presents only a question of law that we review de novo. (*Jordan v. City of Sacramento, supra*, 148 Cal.App.4th at p. 1496; accord, *Sofranek v. County of Merced* (2007) 146 Cal.App.4th 1238, 1251.)

Here, the County did not act to prevent Brown from timely filing a lawsuit within six months of July 21, 2005, the date the County denied her claim. It made no statements to Brown bearing on the necessity of bringing a timely lawsuit. Rather, in a July 11, 2005, letter the County, through its adjusting company, denied liability claiming it could not be responsible for Brown's injuries. The letter also informed Brown that the letter was not intended "to deter the filing of any lawsuit against the County" In the subsequent denial letter of July 21, 2005, the County denied Brown's claim, referenced Government Code section 945.6 and informed Brown that she had six months to file a court action. The County, in clear and explicit language, warned Brown that if she wished to sue the County, Brown had to commence litigation within six months of July 21, 2005.

Brown points to statements in the July 11, 2005, letter directing Brown to the State of California. However, this statement represented the adjuster's legal assessment of the situation, and did not preclude Brown from filing a lawsuit against the County and also pursuing the State. While Brown suggests she was ignorant of the true tortfeasor, as demonstrated by her lengthy attempts to address the situation with the State of California, nothing precluded Brown from pursuing multiple defendants when there is a question of liability. (See, *Greene v. State of California* (1990) 222 Cal.App.3d 117, 122.) The County did not act in any way that could have led Brown to a conclusion that the six months deadline did not have to be met. (*Orr v. City of Stockton, supra*, 150 Cal.App.4th at p. 636.)

Thus, the County did not actually or reasonably induce Brown to forgo her right to file a civil lawsuit within the six month limitation period specified in Government Code section 945.6. This conclusion is buttressed by the fact that there are no statements in the

record by Brown or her attorney that they relied upon any acts or communications by the County or by the County's representative adjuster that deterred Brown from filing a timely lawsuit. (*Cole v. City of Los Angeles* (1986) 187 Cal.App.3d 1369, 1375 [evidence silent on issue of reliance].)

Brown relies upon *Kleinecke v. Montecito Water Dist.* (1983) 147 Cal.App.3d 240 in which the proper governmental entity was estopped from asserting the limitations period. However, *Kleinecke's* rationale is inapplicable to the present case because it involved an attorney's dual representation of potential defendants and the manipulation of that position. Likewise, *Fredrichsen v. City of Lakewood, supra*, 6 Cal.3d 353 is distinguishable. In *Fredrichsen*, the court addressed the issue on review from the sustaining of a demurrer. The governmental entity had sent a letter informing the plaintiff that liability for her fall rested with another party. However, the entity did not send plaintiff a claim form, as she had requested. Unlike the present situation, the *propria persona* plaintiff in *Fredrichsen* was unaware of the procedural and time requirements of the claims statute, and deterred from providing the government with the proper information as it had failed to furnish her the claim form.

Here, the trial court correctly concluded that there are no triable issues of fact and the County was entitled to judgment as a matter of law.

DISPOSITION

The judgment is affirmed. Brown is to pay all costs on appeal.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.